

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 396**

**Introduced by Senator Florez**

February 20, 2003

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An act to amend Section ~~2893 of the Public Utilities~~ 533 of the Insurance Code, relating to ~~telecommunications~~ securities fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Florez. ~~Telecommunications: caller identification~~ Securities fraud: insurer's liability.

*Existing law provides that an insurer is not liable for a loss caused by the wilful act of the insured.*

*This bill would provide that an insurer is liable for a loss caused by the intentional commission of securities fraud by the insured.*

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility, including telephone corporations, and to do all things necessary and convenient in the exercise of its power and jurisdiction. Existing law, with specified exceptions, directs the commission to require any call identification service offered by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, to allow the caller, at no charge, to withhold, on an individual basis, the display of the caller's telephone number from the telephone instrument of the individual receiving the call, but prohibits a caller from withholding the display of the caller's business telephone number when that number is being used for telemarketing purposes.

This bill would prohibit withholding the display of the caller's business telephone number when the call is being made using an automatic dialing-announcing device or predictive dialer, as defined.

~~Because violations of orders, decisions, rules, or other requirements of the Public Utilities Commission are a crime, this bill would impose a state-mandated local program by creating a new crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes—no. State-mandated local program: yes—no.~~

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 2893 of the Public Utilities Code is~~

2     ~~SECTION 1. Section 533 of the Insurance Code is amended~~  
3     ~~to read:~~

4     ~~533. An (a) Except as provided in subdivision (b), an insurer~~  
5     ~~is not liable for a loss caused by the wilful act of the insured; but~~  
6     ~~he is not exonerated by the negligence of the insured, or of the~~  
7     ~~insured's agents or others.~~

8     ~~(b) Notwithstanding subdivision (a), an insurer is liable for a~~  
9     ~~loss caused by an intentional violation of Section 25500 of the~~  
10    ~~Corporations Code by the insured.~~

11   ~~amended to read:~~

12   ~~2893. (a) The commission shall, by rule or order, require that~~  
13   ~~every telephone call identification service offered in this state by~~  
14   ~~a telephone corporation, or by any other person or corporation that~~  
15   ~~makes use of the facilities of a telephone corporation, shall allow~~  
16   ~~a caller to withhold display of the caller's telephone number, on an~~  
17   ~~individual basis, from the telephone instrument of the individual~~  
18   ~~receiving the telephone call placed by the caller. However a caller~~  
19   ~~shall not be allowed to withhold the display of the caller's business~~  
20   ~~telephone number when that number is being used for~~  
21   ~~telemarketing purposes, when the call is being made using an~~  
22   ~~automatic dialing-announcing device, or when the call is being~~  
23   ~~made using a predictive dialer.~~

24   ~~(b) There shall be no charge to the caller who requests that his~~  
25   ~~or her telephone number be withheld from the recipient of any call~~  
26   ~~placed by the caller.~~

~~(c) The commission shall direct every telephone corporation to notify its subscribers that their calls may be identified to a called party either:~~

~~(1) Thirty or more days before the telephone corporation commences to participate in the offering of a call identification service.~~

~~(2) By March 1, 1990, if the telephone corporation is participating in a call identification service prior to January 1, 1990.~~

~~(d) This section does not apply to any of the following:~~

~~(1) An identification service which is used within the same limited system, including, but not limited to, a Centrex or private branch exchange (PBX) system, as the recipient telephone.~~

~~(2) An identification service which is used on a public agency's emergency telephone line or on the line which receives the primary emergency telephone number (911).~~

~~(3) Any identification service provided in connection with legally sanctioned call tracing or tapping procedures.~~

~~(4) Any identification service provided in connection with any "800" or "900" access code telephone service until the telephone corporation develops the technical capability to comply with subdivision (a), as determined by the commission.~~

~~(e) Until the market for local telephone service is competitive, a telephone corporation shall not charge any subscriber for having an unlisted or unpublished telephone number. However, nothing in this subdivision shall be interpreted by the commission to reduce the revenues of telephone corporations. Any actions of the commission pursuant to this subdivision shall be implemented on a competitively neutral basis. This charge shall not be eliminated prior to the effective date upon which offsetting rates are implemented by the commission.~~

~~(f) For purposes of this section:~~

~~(1) "Automatic dialing-announcing device" means any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the number called. The restriction upon withholding the display of the caller's business telephone number contained in subdivision (a), is applicable to~~

1 ~~those persons, corporations, or other entities that are exempted~~  
2 ~~from the operation of Article 1 (commencing with Section 2871)~~  
3 ~~pursuant to subdivisions (d), (e), and (f) of Section 2872.~~

4 ~~(2) “Predictive dialer” means any automatic equipment that~~  
5 ~~incorporates a storage capability of telephone numbers to be called~~  
6 ~~or a random or sequential number generator capable of producing~~  
7 ~~numbers to be called.~~

8 ~~SEC. 2.—No reimbursement is required by this act pursuant to~~  
9 ~~Section 6 of Article XIII B of the California Constitution because~~  
10 ~~the only costs that may be incurred by a local agency or school~~  
11 ~~district will be incurred because this act creates a new crime or~~  
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
14 ~~the Government Code, or changes the definition of a crime within~~  
15 ~~the meaning of Section 6 of Article XIII B of the California~~  
16 ~~Constitution.~~

